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In re Application of
Theimer et al.
Application No. 10/574,876
PCT No.: PCT/IB03/04477
Int. Filing Date: 10 October 2003
Earlier Priority Date: NONE
Atty. Docket No.: BKS.015.WUS
For: Method And Device For
Generating A Game Directory
On An Electronic Gaming Device

COMMUNICATION

This is in response to the petition under 37 CFR 1.10(d) filed on 05 June 2006.

BACKGROUND

This international application was filed on 10 October 2003, claimed no earlier priority date, and designated the U.S. The International Bureau communicated a copy of the published international application to the USPTO on 21 April 2005. The 30 month time period for paying the basic national fee in the United States expired at midnight on 10 April 2006. Applicants filed, *inter alia*, the basic national fee on 06 April 2006.

DISCUSSION

Petitioner requests that certain papers filed to enter the national stage be accorded a filing date of 07 April 2006, rather than 06 April 2006 as shown on the return postcard receipt.

37 CFR 1.10(d) provides that

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The instant petition was filed promptly after the filing of the correspondence in question and the return of the postcard receipt, and therefore it complies with 37 CFR 1.10(d)(1).

The petition complies with 37 CFR 1.10(d)(2) because an Express Mail mailing label number, EV817397251US, was recorded on the Transmittal Letter which accompanied and itemized the filing of the correspondence in question.

The petition also complies with 37 CFR 1.10(d)(3). Counsel has provided a copy of the Express Mail mailing label, number EV817397251US, which shows a "date-in" of "4-6-06" rather than the desired date of 07 April 2006. However, petitioner has also furnished a copy of a USPS receipt showing that postage was paid for Express Mail parcel number EV817397251US on "04/07/2006." Inspection of the USPS "Track & Confirm" Web page corresponding to the Express Mail mailing label in question shows that the status of the correspondence was "Acceptance, April 07, 2006, 4:58 pm, SAINT PAUL, MN 55111." Based on the totality of the evidence currently of record, it would be appropriate to conclude that 37 CFR 1.10(d)(3) has been satisfied. Accordingly, the correspondence in question (including the Transmittal Letter, the declaration, the preliminary amendment, the specification, the claims, the Remarks, the IDS, the copy of the International Search Report and Notification of Transmittal, and the drawings) is regarded as having been filed on 07 April 2006, as requested.

DECISION

Applicants' petition is **GRANTED**, for the reasons described *supra*.

This application is being forwarded to the National Stage Processing Branch for further processing, including updating the records of the USPTO to reflect the filing of the correspondence described above on 07 April 2006, and the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of an executed oath or declaration in compliance with 37 CFR 1.497(a) and (b).



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